Supreme Court, U.S.
FILED
JUL 6 2001
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No. 00-1836

In The

Supreme Court of the United States

JOHN D. NORDSTROM,

Petitioner,

v.

AARON M. WEULE,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MAXWELL KEITH
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San Francisco, CA 94118
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41 pp

I. STATEMENT OF THE CASE

Petitioner has omitted the facts underlying the conclusions of law below. The admissions of Petitioner to the government's Information affords an introduction to the depth and breadth of Mr. Nordstrom's scheme to collect 100 million dollars in premiums, under his control, for worthless automobile liability insurance during the period 1989 to 1993. Petitioner's plea of guilty to the Information was before the courts below and will become admissible evidence. *Teitelbaum Furs, Inc. v. Dominion Insurance Company*, (1962) 375 P.2d 439 (App. 7). The plea of guilty of Petitioner to the Information was part of the record below as Exhibit M. Ex. M. is attached hereto, Respondent's Appendix, (R. App.).

REASONS FOR DENYING THE WRIT

I. Petitioner Engaged in an Intentional Plan to Cause Financial Injury to California Drivers for His Economic Benefit. Respondent's Damages Arising from The Unlawful Plan Cannot Be Discharged Under *Geiger*.

Liability for damages arising from an intentional tort has rested upon the proof that either the actor acted upon a desire to cause the injuries or that he held a belief that the injuries are substantially certain to result from the acts. Restatement (Second) of Torts sec. 8A (1964); cited in *Kawaauhau v. Geiger*, 523 U.S. 57, 62, 118 S.Ct. 42, 78. Wrongful acts knowingly or intentionally committed can neither be justified nor excused on grounds of innocent

intent. *Agnew v. United States* (1897) 165 U.S. 36, 53. *Geiger* makes clear that the exceptions to a discharge from bankruptcy under 11 U.S.C. sec. 523(a) (6) may involve intentional torts when the actor believes that the consequences are substantially certain to follow from his plan. Nordstrom is chargeable with knowledge of the objectives of insureds in paying for and carrying automobile liability insurance; that a State of California program to allow only the sale of insurance policies by insurers possessing minimum capitalizations existed requiring licensing and affirmation of due diligence; and the necessary consequence that those injured by drivers who are holders of worthless insurance who are unable to make satisfaction will suffer injurious financial loss. Under a California statute the insured possesses an insurance contract which provides that upon a judgment against the insured, the victim may sue the insurer upon the judgment subject to the terms and limitations of the policy. Calif. Ins. Code sec. 11580(b) (2). The effect of the Statute is to create a contractual relationship with the insured as completely as if the injured person had been specifically named in the policy. *Bias v. Ohio Farmers Indemnity Co.* (1938) 28 Cal. App. 2d 14, 16. It is the public policy of California to protect the innocent victim of the careless use of automobiles from an inability to sue a financially responsible defendant. *Barrera v. State Farm Mut. Auto. Ins. Co.* (1969) 71 Cal. 2d 659. The Insurance Code of the State of California utilizes criminal law and shut down procedures to protect the public from drivers holding worthless insurance policies. (Calif. Ins. Code secs. 703, 1668.5(a) (4), 1668(1), 1738, 1748.5, 1761, 1763, 1764.4, 1764.7, 1765,

1776). The penal code of the State makes it a misdemeanor for any person to procure insurance for sale in the State from an insurer not incorporated in the State who has not filed the bond required by the State (Calif. Penal Code sec. 439). *Geiger* emphasized that the application of 523(a) (6) may be satisfied upon the showing that acts were committed with the belief that injurious consequences were substantially certain to occur. In contrasting the intent involving in *McIntyre v. Kavanaugh* (1916) 242 U.S. 138 with the facts in *Davis v. Aetna Acceptance Co.* (1934) 293 U.S. 328, the Court made it clear that the general rule specified in the Restatement of Torts is of sufficient formulation and that, as noted by the Ninth Circuit, below, each case will stand or fall within its standard (App. 14).

II. Proof of Alter Ego Control of IIU and IIUW Would Expose the Petitioner to Having Used the Corporate Shield as a Devise to Prevent Creditor From Satisfaction for His Injuries.

Nordstrom asserts the unsupported claim that the stay provisions of the Bankruptcy Code affect the privity element inherent in the finding of alter ego control over his corporations. Petitioner urges that a bankruptcy stay precludes an estoppel effect to the findings, after extensive litigation, that his corporations injured Respondent pursuant to a fraudulent scheme to sell underfunded insurance policies in violation of California law. Petitioner's corporations and Petitioner entered into extensive litigation with respondent in Alameda County (App.

5). Alter ego findings establish that Petitioner is responsible for the satisfaction of the judgment against the corporations. The stay order required Respondent to litigate in the Petitioner's bankruptcy venue; it does not eradicate litigation against the corporate entities. Alter ego findings also satisfy the privity element now found wanting (Id.). Respondent has attached hereto, as part of his Appendix, the Memorandum of Decision of the Bankruptcy Judge below, filed August 25, 1997. Petitioner's Appendix 3 incorrectly set forth a filing date of August 25, 1997. Appendix 3 was filed on June 3, 1998. A finding of alter ego will establish that the Alameda County litigation was carried on under the control of Petitioner and that he is responsible to Respondent on the judgment. See *Parklane Hosiery Company v. Shore* (1979) 439 U.S. 322; *United States v. Gottheiner* (9th Cir. 1983) 703 F.2d 1136; *Yarbrow v. Fed. Dep. Ins. Co.* (9th Cir. BAP 1993) 150 B.R. 233; *Waugh v. Eldridge* (8th Cir. 1996) 95 F.3d 706; *Coover v. First Colony Life Ins. Co.*, (S.D. Fla. 1987) 70 B.R. 554. This Court has held that the bankruptcy proceedings of alter ego corporations should always be subject to vigorous scrutiny in equity. *Pepper v. Litton* (1939) 308 U.S. 295.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Dated: June 28, 2001

Respectfully submitted,

MAXWELL KEITH
Attorney for Respondent

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United States Bankruptcy Court, Southern District Of California, Declaration Of Maxwell Keith In Support Of Plaintiff's Motion To Reconsider Memorandum Of Decision Entered June 3, 1998, Filed June 22, 1998 (R. App. 1) ..... App. 1

United States Bankruptcy Court, For The Southern District Of California, Memorandum Of Decision, Filed August 25, 1997 (R. App. 2) ..... App. 20

EXHIBIT M

MAXWELL KEITH
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Bar No.: 22489

Attorney for Plaintiff

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

Bankruptcy No. 97-01289-A7 In Re John D. and Lois M. Nordstrom, Debtors _____/ Aaron M. Weule, Plaintiff v. John D. Nordstrom, Defendant _____/	Adv. Pro. No. 97 90325 DECLARATION OF MAXWELL KEITH IN SUPPORT OF PLAINTIFF'S MOTION TO RECONSIDER MEMORANDUM OF DECISION ENTERED JUNE 3, 1998 (Filed June 22, 1998)

I, MAXWELL KEITH, declares as follows:

1. I am the attorney for movant, AARON WEULE, a creditor in the above-entitled matter.

2. I am licensed to practice before this Court.

3. I have personal knowledge of the following facts and am competent to testify as to the truth of these facts if called as a witness.

4. Plaintiff has heretofore filed a motion to abate decision depending on the conclusion of criminal proceedings by United States against John Nordstrom in the Central District of California.

5. The Court, in its Memorandum of Decision, filed June 3, 1998 declined to abate the decision. See page 2-3, fn. 4. The Court stated that the papers filed indicated that the adversary proceeding and any pending criminal proceeding were not related.

6. Attached hereto and marked as Exhibit 1 to the Request for Judicial Notice is a certified copy of the Information filed by the United States against John D. Nordstrom, Cr. 98-564.

7. Attached hereto and marked as Exhibit 2 to the Request for Judicial Notice is a certified copy of the docket entries in Cr. 98-654. The first time which I have inspected Exhibits 1 and 2 was on June 17, 1998.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 19, 1988 at San Francisco, CA.

_____

Maxwell Keith

Exhibit 1

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. JOHN NORDSTROM, Defendant.	No. CR 98-564 INFORMATION [18 U.S.C. § 371: Conspiracy] (Filed May 23, 1998)

The U.S. Attorney charges:

COUNT ONE

[18 U.S.C. § 371]

I. INTRODUCTION

At all times relevant to this indictment:

1. Defendant JOHN NORDSTROM was the principal owner of International Insurance Underwriters ("IIU"), whose primary offices were in the State of Washington. As the principal owner of IIU, defendant NORDSTROM hired and oversaw the actions of IIU's corporate officers, directed IIU's operations, and implemented and approved IIU's policies and procedures, which included defendant NORDSTROM's diversion of significant amounts of consumer funds from IIU's bank accounts to his own accounts, to other companies he controlled, to his family members for their personal expenses and to others.

2. IIU was defendant NORDSTROM's creation and generated money as an insurance administrator by managing offshore insurance carriers (hereinafter "the IIU affiliated offshore carriers") which were not admitted or licensed to sell insurance in the State of California and marketing insurance policies issued by the IIU affiliated off-shore carriers to California consumers who sought low cost auto-insurance. By advertising in the retail auto insurance data-base what appeared to be the lowest rates for auto insurance, auto insurance policies issued by the IIU affiliated off-shore carriers and marketed by IIU were purchased by thousands of California consumers from 1989-1993, and IIU amassed over $100 million dollars in policy fees.

3. All of the IIU affiliated off-shore carriers ultimately failed or were shut down by the California Department of Insurance (DOI). These off-shore carriers were actually under-capitalized, shell corporations with inflated financial statements. Several of them had mail drop addresses on Caribbean islands while others were not even licensed as insurance carriers in their claimed countries of origin. These IIU affiliated off-shore carriers included American Trust, Winston Hill, Kingham Atlantic, United States and Continental (US&C), Financial Services Limited, Trelawney Insurance Limited, Universal Reinsurance and Insurance, Domestic Insurance Limited, and Commercial Indemnity Assurance Limited.

4. IIU sought to sell as many auto-insurance policies issued by each of its affiliated off-shore carriers as possible, even though the majority of these carriers had difficulties honoring the auto-insurance policies they sold, until the DOI barred the carrier from operation, at which

point another IIU affiliated off-shore carrier would assume the policies of the barred carrier. This IIU affiliated off-shore carrier would also ultimately fail or be ordered to cease sales to California consumers, at which point another IIU affiliated off-shore carrier would assume the policies. The life-span of each IIU affiliated off-shore carrier ranged from as little as several months to no more than one and one-half years.

5. IIU operated in such a way that consumers would have difficulty identifying their insurance carrier and determining to whom they should turn when, as often happened, the carrier from which they had originally purchased insurance was no longer in business. Consumer contacts to IIU went unheeded or were referred to intermediaries in Marina del Rey and Van Nuys, California, selected by defendant NORDSTROM, who themselves often directed the aggrieved consumers back to IIU in Washington where they would be ignored. In this way, significant numbers of consumers were deprived of the protection of the automobile insurance they had contracted for and were denied the premium refunds required by law.

II. OBJECTS OF THE CONSPIRACY

6. Beginning on a date unknown and continuing through June 1993, within the Central District of California and elsewhere, defendant NORDSTROM, together with others known and unknown, knowingly and deliberately conspired, confederated, and agreed to commit mail and wire fraud by knowingly devising, participating in, and executing a scheme to defraud, and to obtain

money and property by means of false and fraudulent pretenses, representations, promises, and omissions and concealments of material facts, and causing the use of the United States mails and interstate wire transmissions for the purpose of executing such scheme to defraud and attempting to do so, in violation of Title 18, United State Code, Sections 1341 and 1343.

III. THE MANNER AND MEANS OF THE CONSPIRACY

7. In carrying out the conspiracy, defendant NORDSTROM, together with others known and unknown, knowingly engaged in the following fraudulent and deceptive acts, practices, and devices, among others:

(a) Defendant NORDSTROM falsely represented and caused others to falsely represent that certain of the IIU affiliated off-shore insurance carriers were financially viable and able to meet their obligations when, in fact, the IIU affiliated carriers were, as a general rule, financially troubled companies that were incapable of remaining in business long enough to pay any significant number of claims, premium refunds, and other obligations.

(b) Defendant NORDSTROM structured and caused others to structure premium payment terms on policies issued by the IIU affiliated off-shore carriers to be the lowest advertised in a computerized retail database so that consumers seeking the lowest down payment terms would select a policy issued by an IIU affiliated off-shore carrier.

c) Defendant NORDSTROM requested daily reports on the volume of applications and the collection of policy fees for IIU affiliated off-shore carriers, in part, so that he could be apprised of the amount of funds deposited in the IIU accounts, and could have a portion of those funds diverted to him by way of a check or wire transfer of funds.

d) Defendant NORDSTROM directed that consumer insurance applications be stripped of premium checks and that the funds derived from the checks be placed into IIU bank accounts to be utilized, in significant part, for the personal benefit of defendant NORDSTROM.

e) Defendant NORDSTROM took and caused others to take unearned premiums that were supposed to be held in a trust account until they were earned, and used and caused others to use significant amounts of those unearned premiums to pay for items and services for the benefit of defendant NORDSTROM while falsely classifying the payments as distributions or loans.

(f) Defendant NORDSTROM delayed and caused others to delay the processing of refunds for months, if ever, with the result that consumers often were denied repayment for insurance services for which they had paid but which were not rendered. In this way, premium funds remained available in the IIU operating account for defendant NORDSTROM's personal use. The delay in refunds also enabled new IIU affiliated off-shore carriers to assume the debt of the former carrier, leaving consumers at a loss to locate the proper company from which to request refunds.

(g) Defendant NORDSTROM implemented procedures to under-report the volume of policy sales in order to deprive carriers of premiums needed to pay claims and make premium refunds and enable funds to be diverted to himself, to companies he owned or controlled, or others he designated.

VI. OVERT ACTS

8. In furtherance of the conspiracy, defendant NORDSTROM, and others known and unknown, committed one or more of the following overt acts, among others:

1) On or about May 7, 1990, defendant NORDSTROM caused a $23,000 check to be issued from the IIU operating account and mailed, via the U.S. Mail, to himself.

2) On or about May 25, 1990, defendant NORDSTROM caused a $50,000 check to be issued from the IIU operating account and mailed, via the U.S. Mail, to Emerald City Insurance Marketing, a company he controlled.

3) On or about May 29, 1990, defendant NORDSTROM caused a $22,000 check to be issued from the IIU operating account and mailed, via the U.S. Mail, to himself.

4) On or about August 1, 1990, defendant NORDSTROM caused an $80,000 check to be issued from the IIU operating account and mailed, via the U.S. Mail, to himself.

5) On or about September 18, 1990, defendant NORDSTROM caused a $30,000 check to be issued from the IIU operating account and mailed, via the U.S. Mail, to himself.

6) On or about November 13, 1990, defendant NORDSTROM caused a $30,000 check to be issued form the IIU operating account and mailed, via the U.S. Mail, to himself.

7) On or about December 4, 1990, defendant NORDSTROM caused an $85,000 check to be issued from the IIU operating account and mailed, via the U.S. Mail, to himself.

8) On or about, February 1, 1991, defendant NORDSTROM caused a $500,000 check to be issued from the IIU operating account to fund a loan to an acquaintance of his.

9) On or about February 1, 1991, defendant NORDSTROM caused a $100,000 wire transfer from the IIU operating account in Seattle, Washington to a personal bank account in his name in San Diego, California.

10) On or about April 16, 1991, defendant NORDSTROM caused a $30,000 wire transfer from the IIU operating account in Seattle, Washington to a personal bank account in his name in San Diego, California.

11) On or about April 30, 1991, defendant NORDSTROM caused a $25,500 wire transfer from the IIU operating account in Seattle, Washington to a personal bank account in his name in San Diego, California.

12) On or about May 21, 1991, defendant NORDSTROM caused a $35,000 wire transfer from the IIU

operating account in Seattle, Washington to a personal bank account in his name in San Diego, California.

13) On or about June 5, 1991, defendant NORDSTROM caused a $25,000 wire transfer from the IIU operating account in Seattle, Washington to a personal bank account in his name in San Diego, California.

14) On or about September 4, 1991 defendant NORDSTROM caused a $36,844.34 wire transfer from the IIU operating account in Seattle, Washington to his personal bank account in San Diego, California.

15) On or about September 24, 1991 defendant NORDSTROM caused a $35,000 wire transfer from the IIU operating account in Seattle, Washington to his personal bank account in San Diego, California.

16) On or about October 21, 1991 defendant NORDSTROM caused a $135,000 wire transfer from the IIU operating account is Seattle, Washington to his personal bank account in San Diego, California.

17) On or about November 1, 1991 defendant NORDSTROM caused a $28,000 wire transfer from the IIU operating account in Seattle, Washington to his personal bank account in San Diego, California.

18) On or about January 21, 1992 defendant NORDSTROM caused a $32,000 wire transfer from the IIU operating account in Seattle, Washington to his personal bank account in San Diego, California.

19) On or about March 3, 1992 defendant NORDSTROM caused a $47,410.25 wire transfer from the IIU premium trust account in Seattle, Washington to the account of JAKNOR, INC., a company recently formed

and owned by defendant NORDSTROM, in San Diego, California.

20) On or about March 13, 1992, defendant NORDSTROM caused a $6833.33 check to be issued from the IIU operating account and mailed, via the U.S. Mail, to the San Diego Charger Associates for the rental of a luxury viewing suite at a San Diego Sports Stadium.

21) On or about April 17, 1992 defendant NORDSTROM caused a $26,080 wire transfer from the IIU operating account in Seattle, Washington to his personal bank account in San Diego, California.

22) On or about April 22, 1992, defendant NORDSTROM caused an $85,755.29 wire transfer from the IIU premium trust account in Seattle, Washington to the account of JAKNOR, INC., a company recently created and owned by defendant NORDSTROM, in San Diego, California.

23) On or about May 18, 1992 defendant NORDSTROM caused a $6833.33 check to be issued from the IIU operating account and mailed, via the U.S. Mail, to the San Diego Chargers Professional Football Team for the rental of a luxury viewing suite at a San Diego sports stadium.

24) On or about May 19, 1992, defendant NORDSTROM caused a $60,000 wire transfer from the IIU premium trust account in Seattle, Washington to the account of JAKNOR, INC., a company recently created and owned by defendant NORDSTROM, in Sand Diego, California.

25) On or about May 28, 1992 defendant NORDSTROM caused an $80,000 wire transfer from the IIU operating account in Seattle, Washington to his personal bank account in San Diego, California.

26) On or about June 23, 1992, defendant NORDSTROM caused a $55,034.46 wire transfer from the IIU premium trust account in Seattle, Washington to the account of JAKNOR, INC., a company owned by defendant NORDSTROM, in San Diego, California.

27) On or about July 6, 1992 defendant NORDSTROM caused a $6833.33 check to be issued from the IIU operating account and mailed, via the U.S. Mail, to the San Diego Chargers Professional Football Team for the rental of a luxury viewing suite at a San Diego sports stadium.

28) On or about July 17, 1992, defendant NORDSTROM caused two wire transfers in the amounts of $80,217.19 and $10,537.10 from the IIU premium trust account in Seattle, Washington to the account of DDWJ, INC., a company recently created and owned by defendant, NORDSTROM, in San Diego, California.

29) On or about August 12, 1992 defendant NORDSTROM caused an $83,388.94 wire transfer from the IIU premium trust account in Seattle, Washington to the account of DDWJ, INC., a company created and owned by defendant NORDSTROM, in San Diego, California.

30) On or about September 10, 1992, defendant NORDSTROM caused a $40,000 wire transfer from the IIU operating account in Seattle, Washington to the bank account in Los Angeles, California, of Toma Surplus Lines

Brokers, a company co-owned by defendant NORDSTROM in Marina del Rey, California, for the purpose of providing a personal loan to an acquaintance of defendant NORDSTROM.

31) On or about September 15, 1992 defendant NORDSTROM caused a $17,555.25 wire transfer from the IIU premium trust account in Seattle, Washington to the account of DDWJ, Inc., a company created and owned by defendant NORDSTROM, in San Diego, California.

32) On or about September 24, 1992, defendant NORDSTROM caused a $17,657.93 wire transfer from the premium trust account of IIU in Seattle, Washington to the account of DDWJ, Inc., a company created and owned by defendant NORDSTROM, in San Diego, California.

33) On or about September 30, 1992, defendant NORDSTROM caused a $32,085.87 wire transfer from the premium trust account of IIU in Seattle, Washington to the account of DDWJ, Inc., a company created and owned by defendant NORDSTROM, in San Diego, California.

34) On or about October 15, 1992, defendant NORDSTROM caused a $59,014.20 wire transfer from the account of IIU in Seattle, Washington to the bank account in Los Angeles, California, of Toma Surplus Lines, for the purpose of funding $30,000 of a loan to a personal acquaintance of defendant NORDSTROM.

35) On or about October 20, 1992, defendant NORDSTROM caused a $91,508.60 wire transfer from the IIU premium trust account in Seattle, Washington to the account of DDWJ, Inc., a company created and owned by defendant NORDSTROM, in San Diego, California.

36) On or about November 23, 1992, defendant NORDSTROM caused a $30,000 wire transfer from the IIU operating account in Seattle, Washington to the bank account in Los Angeles, California, of Toma Surplus Lines, for the purpose of funding a loan to a personal acquaintance of defendant NORDSTROM.

37) On or about December 28, 1992 defendant NORDSTROM caused a $40,000 wire transfer from the IIU operating account in Seattle Washington to his personal bank account in San Diego, California.

38) On or about January 6, 1993, defendant NORDSTROM caused a $30,000 wire transfer from the IIU operating account in Seattle, Washington to his personal bank account in San Diego, California.

39) On or about February 17, 1993, defendant NORDSTROM caused a $30,000 wire transfer from the IIU operating account in Seattle, Washington to the account of Nordstrom and Tanner Insurance Broker in Pleasanton, California, a company controlled by defendant.

40) On or about February 22, 1993, defendant NORDSTROM caused a $75,000 wire transfer from the IIU operating account in Seattle, Washington to the account of Nordstrom and Tanner Insurance Broker in Pleasanton, California, a company controlled by defendant.

41) On or about February 23, 1993, defendant NORDSTROM caused a $50,000 wire transfer from the IIU operating account in Seattle, Washington to the account of Nordstrom and Tanner Insurance Broker in Pleasanton, California, a company controlled by defendant.

42) On or about February 25, 1993, defendant NORDSTROM caused a $30,000 wire transfer from the IIU operating account in Seattle, Washington to the account of Nordstrom and Tanner Insurance Broker in Pleasanton, California, a company controlled by defendant.

43) On or about March 9, 1993 defendant NORDSTROM caused a $7005.16 check from the IIU operating account to be issued and mailed, via the U.S. Mail, to the San Diego Chargers Football Team for the rental of a luxury suite at a San Diego Sports stadium.

44) On or about April 21, 1993, defendant NORDSTROM caused a $55,000 wire transfer from the IIU operating account in Seattle, Washington, to the account of Nordstrom and Tanner Insurance Broker in Pleasanton, California, a company controlled by defendant.

45) On or about May 12, 1993, defendant NORDSTROM caused a $7005.16 check from the IIU operating account to be issued and mailed, via the U.S. Mail, to the San Diego Chargers Professional Football Team, for the rental of a luxury viewing suite at a San Diego sports stadium.

46) On or about May 14, 1993, defendant NORDSTROM caused a $10,000 wire transfer from the IIU operating account in Seattle, Washington to the account

of Nordstrom and Tanner Insurance Broker in Pleasanton, California, a company controlled by defendant.

RICHARD DROOYAN,
Chief Assistant United States Attorney
Acting United States Attorney

/s/ David C. Scheper
DAVID C. SCHEPER
Assistant United States Attorney
Chief, Criminal Division

SEAN BERRY
Assistant United States Attorney
Chief, Major Frauds Section

Exhibit No. 2

TRANSF

U.S. District Court
Central District of California (Western Div.)

CRIMINAL DOCKET FOR CASE #: 98-CR-564-ALL

Filed: 05/29/98

USA v. Nordstrom
Dkt# in other court: None

Case Assigned to: Judge Edward Rafeedie

JOHN NORDSTROM (1) Defendant	Thomas Pollack [COR LD NTC ret] 1800 Avenue of the Stars Suite 500 Los Angeles, CA 90067 310-203-7613

Pending Counts:	Disposition
18:371:CONSPIRACY (1)	
Offense Level (opening):	4
Terminated Counts:	NONE
Complaints:	NONE
U. S. Attorneys:	NONE

5/29/98	1	INFORMATION filed against John Nordstrom (1) count(s) 1 Offense occurred in LA. (vf) [Entry date 06/01/98]
5/29/98	2	CASE SUMMARY filed by AUSA Julie Werner-Simon, attorney for USA, as to John Nordstrom. Defendant's date of birth: 2/6/38. (vf) [Entry date 06/01/98]

5/29/98	3	WAIVER OF INDICTMENT filed as to John Nordstrom. Approved. (mc) [Entry date 06/12/98]
6/1/98	11	Filing of PLEA AGREEMENT filed by USA as to John Nordstrom (es) [Entry date 06/18/98]
6/8/98	4	MINUTES OF POST-INDICTMENT ARRAIGNMENT HEARING held before Magistrate Judge Carla M. Woehrle as to John Nordstrom: Case reassigned to Judge Carlos R. Moreno. First appearance of John Nordstrom entered. Retained Attorney Thomas Pollack present. Plea and trial setting set for 2:00pm, 6/8/98 for John Nordstrom. Tape No.: 2024 (mc) [Entry date 06/12/98]
6/8/98	5	DESIGNATION AND APPEARANCE of Attorney for John Nordstrom (mc) [Entry date 06/12/98]
6/8/98	6	STATEMENT OF DEFENDANT'S CONSTITUTIONAL RIGHTS filed as to John Nordstrom. (mc) [Entry date 06/12/98]
6/8/98	7	WAIVER OF INDICTMENT filed as to John Nordstrom. Approved. (mc) [Entry date 06/12/98]
6/8/98	8	BOND AND CONDITIONS OF RELEASE filed as to John Nordstrom, in the amount of: $100,000. Approved by Magistrate Judge Carla M. Woehrle. (mc) [Entry date 06/12/98]
6/8/98	9	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 224 (Related Case) filed as to John Nordstrom. (Related Case No.: CR97-591-ER) Case transferred from

		Judge Carlos R. Moreno to Judge Edward Rafeedie for all further proceedings. The case number will now reflect the initials of the reassigned judge, (CR98-564-ER). (mc) [Entry date 06/12/98]
6/8/98	10	MINUTES OF CHANGE OF PLEA HEARING held before Judge Edward Rafeedie as to John Nordstrom: Defendant moves to change plea to the Info. Plea of guilty entered by John Nordstrom (1) count(s) 1. The Court questions the defendant regarding plea of guilty and finds it knowledgeable and voluntary and orders the plea accepted and entered. The Court refers John Nordstrom to the Probation Office for investigation and report. Sentencing hearing set for 4:30pm, 9/8/98 for John Nordstrom. C/R: Mary Tucker (mc) [Entry date 06/15/98]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

IN RE JOHN D. NORDSTROM and LOIS M. NORDSTROM, Debtors.	Case No. 97-01289
AARON M. WEULE, Plaintiff, vs. JOHN D. NORDSTROM, Defendant.	Adv. No. 97-90325 MEMORANDUM OF DECISION (Filed Aug. 25, 1997)

Maxwell Keith, San Francisco, California, for Plaintiff.

Cheryl L. Stengel, LAW OFFICE OF MICHAEL T. O'HALLORAN, San Diego, California, for Defendant.

Background.[1]

In this adversary proceeding, Plaintiff Aaron Weule seeks a determination that his claim against Defendant John Nordstrom is excepted from discharge in Defendant's Chapter 7 bankruptcy case pursuant to 11 U.S.C. §§ 523(a)(2), 523(a)(4), and 523(a)(6), and for an award of

[1] The undersigned was assigned to preside over this action as a visiting judge under the Ninth Circuit's Bankruptcy Workload Equalization Pilot Program.

damages. The matter came on for hearing before the Court on July 22, 1997, on Defendant's Motion to Dismiss and, alternatively, for More Definitive Statement. The Court took the motion under advisement.

Applicable Law.

The purpose of a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Federal Procedure, made applicable here under F.R.B.P. 7012, is to test the legal sufficiency of a plaintiff's claims for relief. In determining whether the plaintiff has advanced potentially viable claims, the complaint is be construed in a light most favorable to the plaintiff and its allegations taken as true. *Scheuer v. Rhodes*, 416 U.S. 232 (1974); *Church of Scientology of Ca. v. Flynn*, 744 F.2d 694, 696 (9th Cir. 1984). In reviewing the allegations of a complaint, however, legal conclusions, deductions or opinions couched as factual allegations are not given a presumption of truthfulness. *See Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). The court may also consider judicially-noticed documents filed in support of such a motion. *Mack v. South Bay Beer Distribs.*, 798 F.2d 1279, 1282 (9th Cir. 1986). The complaint should not be dismissed for failure to state a claim unless it appears that the plaintiff can prove no set of facts in support of the claim which would entitle plaintiff to relief. *Conley v. Gibson*, 355 U.S. 41 (1957); *Jacobson v. Hughes Aircraft Co.*, 105 F.3d 1288, 1292 (9th Cir. 1997). Thus, a court may properly grant a Rule 12(b)(6) motion if it is clear from the face of the complaint and judicially-noticed documents that Plaintiff cannot prevail as a matter of law.

Facts.

The following factual allegations contained in the Complaint will be taken as true.

From approximately 1990 through 1993, Defendant owned and operated two related entities, International Insurance Underwriters, Inc. ("IIU") and International Insurance Underwriters of Washington, Inc. ("IIUW"). IIU was a licensed insurance broker in the State of California. IIUW was the managing general agent of several non-admitted alien insurance companies selling automobile insurance in California.

On January 25, 1992, Plaintiff was injured in an automobile accident in Oakland, California. The driver of the other automobile, Mr. Moscoso, had previously obtained insurance coverage from Defendant's related companies. Moscoso's policy showed an expiration date of December 6, 1991,[2] and a coverage limit of $35,000.

Plaintiff sued Moscoso in state court for negligence, and on March 4, 1993, he obtained a default judgment against Moscoso in the approximate sum of $45,000. In connection with his efforts to recover against Moscoso's policy, Plaintiff discovered that the insurer was insolvent.

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[2] Plaintiff alleges, and the Court, for purposes of this motion, accepts as true that neither Defendant nor his related entities issued a notification of nonrenewal to Mr. Moscoso as required by California Insurance Code § 1861.03. As a result, the policy was arguably still in effect on the date of the accident. *See* California Insurance Code § 663(c) (coverage is extended as a matter of law upon failure to provide notice of nonrenewal).

On October 22, 1993, Plaintiff filed a state court complaint against Defendant and his related entities, IIU and IIUW. Plaintiff alleged that Defendant intentionally engaged in a fraudulent scheme to sell underfunded insurance policies, arguing that such was in violation of California law.

On January 28, 1997, Defendant filed for Chapter 7 bankruptcy relief. As a result, Defendant was severed from the state court action. The state court action continued and, on April 9, 1997, a judgment was entered in favor of Plaintiff against IIU and IIUW. The state court found that these entities had violated the California Insurance Code by fraudulently marketing insurance policies from under-capitalized, nonadmitted insurance companies, and by intentionally failing to notify the insured of nonrenewal of his policy. The state court held that IIU and IIUW were jointly and severally liable to Plaintiff $32,500[3] for compensatory damages, $85,000 for attorney fees, and prejudgment interest and costs. In addition, the state court held that IIU and IIUW were severally liable to Plaintiff in the amount of $500,000 for punitive damages.

On May 6, 1997, Plaintiff filed this adversary proceeding against Defendant alleging that his claim arose from Defendant's intentionally tortious conduct, and that such is excepted from discharge under 11 U.S.C. §§ 523(a)(2), (a)(4), and (a)(6). Alternatively, Plaintiff claims that the state court judgments entered against IIU

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[3] Representing the policy limit of $35,000 less the partial satisfaction of Plaintiff's claim against the insolvent insurer by the California Insurance Guarantee Association of $2,500.

and IIUW are entitled to collateral estoppel effect under the alter ego doctrine. In addition to a dischargeability determination, Plaintiff requests an award of compensatory and punitive damages, attorney fees and costs, and a jury trial.

On June 6, 1997, Defendant moved under F.R.B.P. 7012 to dismiss the Complaint. Defendant argues that the Complaint is subject to dismissal due to Plaintiff's failure to state any claim upon which relief can be granted.

Given the procedural posture of this case, the Court will assume that Mr. Moscoso did not in fact receive notice of nonrenewal, as Plaintiff alleges, and that coverage existed at the time of the accident, and that Defendant was intentionally engaging in a scheme to defraud the insured by marketing underfunded policies. Under these facts, then, the Court must determine whether a claim would lie against Defendant individually in California state court.

Analysis.

Two of Plaintiff's claims for relief cannot, as a matter of law, be sustained against Defendant, and should be disposed of at this time.

First, Plaintiff maintains a claim for relief under 11 U.S.C. § 523(a)(2)(A). Section 523(a)(2)(A) provides that a bankruptcy discharge will not relieve an individual debtor from any debt "obtained by false pretenses, a false representation, or actual fraud." 11 U.S.C. § 523(a)(2)(A). In order to except a debt from discharge under this provision, Plaintiff must prove: (1) that Defendant made

representations to Plaintiff; (2) that at the time Defendant knew were false; (3) that Defendant made them with the intention of deceiving Plaintiff; (4) that Plaintiff relied on such representations, and; (5) that Plaintiff sustained the alleged loss as the proximate result of the representations. *E.g., In re Apte*, 96 F.3d 1319 (9th Cir. 1996); *In re Baugh*, 97.2 I.B.C.R. 51, 55.

Here, Plaintiff does not allege in his Complaint, nor could he, that Defendant made false representations to Plaintiff. If at all, Defendant made such representations only to Mr. Moscoso. Even if Plaintiff could point to any representations, he has not alleged he relied upon those representations, nor does it appear any fraud was the cause of his loss. Accordingly, the Court concludes that under these circumstances, Defendant's motion to dismiss Plaintiff's claim for relief under 11 U.S.C. § 523(a)(2)(A) should be granted.

Plaintiff also maintains that the allegations set forth in the Complaint assert a claim for relief under 11 U.S.C. § 523(a)(4). The Court disagrees. Section 523(a)(4) excepts a debt from discharge to the extent the debt is obtained by fraud or defalcation while the debtor was acting in a fiduciary capacity as to the claimant. 11 U.S.C. § 523(a)(4). A fraud or defalcation while acting in a fiduciary capacity must involve an express or statutory trust. *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991); *In re Baugh*, 97.2 I.B.C.R. 51, 55. In order to satisfy the narrow bankruptcy definition of a fiduciary, an express trust relationship must be found to pre-exist the acts upon which the allegations of fraud or defalcation are based.

Under California insurance law, does a fiduciary relationship exist between the Plaintiff and Defendant here? The parties have not provided the Court, nor can it locate, any support for the proposition that such a fiduciary relationship exists. Although California courts have implied that the relationship between an insurer and the insured is "akin to" a fiduciary one, they have never squarely so held. The California courts have merely characterized the relationship as one holding fidicuary responsibilities, *E.g., New Plumbing Contractors, Inc. v. Nationwide Mutual Ins. Co.*, 7 Cal.App.4th 1088, 1096, 9 Cal.Rptr. 469, 473 (1992). Moreover, those courts characterizing the duties of an insurer or its agents as fiduciary in nature do so based upon the special nature and purposes inherent in an insurance contract. *Id.* And, most importantly, these fiduciary responsibilities do not extend beyond the terms of the insurance contract *between the insured and the insurer. Id.*

Here, there was no insurance contract between Plaintiff and Defendant or his entities, and the parties do not stand in a fiduciary relationship. Accordingly, the Court concludes there is no legal basis for Plaintiff's claims under Section 523(a)(4), and Defendant's motion to dismiss Plaintiff's claim for relief under that provision should be granted.

Plaintiff contends that the underlying state court judgment entered against IIU and IIUW should be afforded collateral estoppel effect in Defendant's Chapter 7 bankruptcy proceedings. The Supreme Court of California has stated that collateral estoppel precludes relitigation of issues previously adjudicated if: (1) the issues necessarily decided in the previous suit are identical to

the issues sought to be relitigated; (2) there was a final judgment on the merits of the previous suit, and; (3) the party against whom the plea is asserted was a party, or in privity with a party, to the previous suit. *E.g., San Diego County Department of Social Services v. James J.*, 3 Cal.App.4th 984, 993, 46 Cal.Rptr.2d 491, 497 (1995).

In this case, the Court concludes that the first and second elements are satisfied handily. Effective state court judgments have been entered against IIU and IIUW on the grounds that these two entities had willfully violated certain provisions of the California Insurance Code resulting in damage to Plaintiff. There is no showing that IIU and IIUW have taken any action in the state court to set aside the judgments, nor is there anything in the record indicating that the judgments are being appealed. Accordingly, the Court assumes, for purposes of the present motion, that a final judgment has been rendered.[4] In addition, the issues necessarily decided in the previous suit are arguably identical to the issues sought to be relitigated: whether Defendant, on behalf of his companies, engaged in willful and malicious conduct resulting in damages to Plaintiff.

The third element of the collateral estoppel doctrine, that the party against whom the plea is asserted was a party, or in privity with a party, to the previous suit, is

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[4] According to California law, a judgment on appeal is not final for purposes of collateral estoppel. E.g., *National Union Fire Ins. Co. v. Stites Prof. Law Corp.*, 235 Cal.App. 3d 1718, 1 Cal.Rptr.2d 570 (1991). However, a default judgment is afforded collateral estoppel effect. *E.g., Four Star Electric, Inc., v. F & H Construction*, 7 Cal.App.4th 1375, 10 Cal.Rptr.2d 1 (1992).

more problematic. The term "privity" refers to some relationship or connection with the party which makes it proper to hold "privies" bound with the actual parties. "Who are privies requires careful examination into the circumstances of each case as it arises." *Zaragosa v. Craven*, 33 Cal.2d 315, 318, 202 P.2d 73 (1949). The courts have abandoned application of rigid categories in favor of a practical approach which addresses the question of "whether the non-party is sufficiently close to the original case to afford application of the principle of preclusion." *People v. Drinkhouse*, 4 Cal.App.3d 931, 937, 84 Cal.Rptr. 773 (1970). Here, Defendant had filed for bankruptcy and was severed as a party in the state court action prior to entry of any judgment. Because of this, Defendant clearly lacked an incentive to litigate the issues in the state court proceeding given his limited liability. Under these circumstances, the judgment should not therefore be given collateral estoppel effect *as against Defendant* in this action. While the findings and conclusion of the state court may be relevant in this action, they are not binding on Defendant.

Next, Plaintiff maintains that the allegations set forth in the Complaint assert a legally sufficient claim for relief under 11 U.S.C. § 523(A) (6). Plaintiff contends that Defendant, in directing a scheme to defraud policy holders, engaged in intentional, tortious conduct. Defendant maintains that such comes within the ambit of Section 523(a) (6). Further, Plaintiff argues that the doctrine of alter ego applies due to Defendant's purported intentional, tortious conduct, thereby transferring any liability from IIU and IIUW to Defendant personally, making

Defendant personally liable for the indebtedness represented by the state court judgment centered against IIU and IIUW.

Under Section 523(a) (6), an individual debtor will not be discharged from any debt that is the result of "willful and malicious injury . . . to another or the property of another entity." 11 U.S.C. § 523(a) (6). Therefore, in order to assert a valid claim for relief under Section 523(a) (6), Plaintiff must prove by a preponderance of the evidence that the debtor's actions were "willful and malicious." *Grogan v. Garner*, 498 U.S. 279, 291 (1991). The Ninth Circuit has defined "willful and malicious" as "a wrongful act . . . done intentionally, [which] necessarily produces harm and is without just cause or excuse . . . even absent proof of specific intent to injure." *In re Cecchini*, 780 F.2d 1440, 1443 (9th Cir. 1986).

The term "willful" in this context means "deliberate or intentional." *In re Britton*, 950 F.2d 755, 759 (9th Cir. 1991). Thus, a creditor need only show that the debtor acted intentionally. The intent required is intent to do the act at issue, not intent to injure the victim. *In re Britton*, 950 F.2d at 605; *In re Cecchini*, 780 F.2d at 1443.

To prove malice, it is only necessary to show that the debtor committed a wrongful act which necessarily produced harm and was without just cause or excuse. *In re Littleton*, 942 F.2d 551, 554 (9th Cir. 1991). Malice may be inferred from the wrongful act. *Id.* Further, the wrongful act element is construed broadly. *See In re Gee*, 173 B.R. 189, 192-93 (9th Cir. B.A.P. 1994) (finding conduct that

violates state or federal law and which necessarily produces harm wrongful under Section 523(A) (6), particularly conduct infringing upon the rights of others). To satisfy the requirement that the conduct necessarily produced harm, it is sufficient for the creditor to show it was reasonably foreseeable that the debtor's wrongful conduct would result in injury to the creditor. *In re Britton*, 950 F.2d at 605; *In re Littleton*, 942 F.2d at 554.

Here, it was Defendant's entities that are allegedly guilty of wrongful activities. Ordinarily, a corporation is regarded as a legal entity separate and distinct from its stockholders, officers and directors. *Robbins v. Belcher*, 52 Cal.App.4th 886, 892, 60 Cal. Rptr.2d 815, 818 (1997). However, under the alter ego doctrine, when a corporation is employed by an individual to perpetrate fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, a court may disregard the corporate entity and treat the corporation's act as if it were done by the persons actually controlling the corporation. *Hennessey's Tavern, Inc. v. American Air Filter Co., Inc.*, 204 Cal.App.3d 1351, 1358-59, 251 Cal.Rptr. 859, 863 (1988). In general, the two requirements for the alter ego doctrine are that (1) there is such a unity of interest and ownership between the corporation and the individual controlling it that their separate personalities no longer exist, and (2) failure to disregard the corporate entity would sanction a fraud or promote injustice. *Robbins*, 52 Cal.App.4th at 892, 60 Cal. Rptr.2d at 818. The doctrine is applicable where an innocent party attacks the corporate form as to an injury to that party's interests. *Robbins*, 52 Cal.App.4th at 892, 60 Cal. Rptr.2d at 818. The issue is whether, in a particular case, justice and equity can best be accomplished and

fraud and unfairness defeated by disregarding the distinct entity of the corporate form. *Robbins*, 52 Cal.App.4th at 892, 60 Cal.Rptr.2d at 818. A claim against the alter ego defendant is identical with that claimed by the plaintiff against the already-named defendant. *Hennessey's Tavern*, 204 Cal.App.3d at 1359, 251 Cal.Rptr. at 863. The issue of whether the corporate veil should be disregarded may be resolved in a separate proceeding subsequent to the action against the corporate defendant. *Hennessey's Tavern*, 204 Cal.App.3d at 1358, 251 Cal.Rptr. at 863.

Here, the allegations are sufficient to state a potential claim for relief against Defendant as the actor for the wrongful conduct of the entities he allegedly controlled. The Plaintiff alleges that Defendant controlled these insurance agencies, and that he directed and supervised them in the wrongful sale of auto insurance in undercapitalized companies to the public. If proven at trial, these allegations could give rise to a nondischargeable claim by Plaintiff for any damages he suffered as a result of Defendant's arguably willful and malicious conduct. Plaintiff's Section 523(a) (6) claim must therefore proceed to trial, and Defendant's motion to dismiss it should be denied.

Plaintiff also seeks an award of punitive damages, attorney fees and costs, and a determination that such awards would be accepted from discharge.

Although Defendant contends that this Court is without authority to award punitive damages, as the initial trier of fact in this case, the Bankruptcy Court does have the authority to award such damages in connection with the Section 523(a) (6) discharge litigation. *Klaus v.*

Thompson (In re Klaus), 181 B.R. 487, 492 (Bankr.C.D.Cal. 1995) (citing *Devlin v. Kearney Mesa AMC/Jeep/Renault*, 155 Cal.App.3d 381, 388, 202 Cal.Rptr. 204 (1984). State law determines whether punitive damages should be granted. *Sunclipse, Inc. v. Butcher (In re Butcher)*, 200 B.R. 675, 678 (Bankr.C.D.Cal. 1996). California law provides:

> In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, express or implied, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

Cal. Civ. Code § 3294(a) (West Supp. 1996).

In this case, the allegations made by Plaintiff concerning Defendant's arguably willful and malicious conduct, if proven at trial, could justify relief under the above statute. Therefore, Plaintiff's claim for an award of punitive damages must proceed to trial, and Defendant's motion to dismiss it should be denied.

The Ninth Circuit, moreover, has held that punitive damages fall within the scope of Section 523(a) (6) as liabilities for willful and malicious injuries that may be excepted from discharge. *Moraes v. Adams (In re Adams)*, 761 F.2d 1422, 1428 (9th Cir. 1985). Since Plaintiff's claim for the award of punitive damages will proceed to trial, it is likewise appropriate that Plaintiff's claim to except such damages from discharge also proceed to trial. Therefore, Defendant's motion to dismiss this claim should be denied.

Concerning Plaintiff's claim for attorney fees and costs, a distinction must be drawn between those attorney fees incurred prepetition in state court, and the attorney fees incurred in litigating this dischargeability claim. As for prepetition attorney fees, the Ninth Circuit Bankruptcy Appellate Panel has applied the "status dependent doctrine" in holding that "[a]ncillary obligations such as attorneys' fees and interest may attache to the primary debt; consequently, their status depends on that of the primary debt." *In re Florida*, 164 B.R. 636, 639 (9th Cir. B.A.P. 1994) (citations omitted). Under this doctrine, if the underlying debt is held nondischargeable under Section 523(a) (6), the attorney fees and costs incurred with relation to the debt are also excepted from discharge. This Court finds that the "status dependent" doctrine is the appropriate standard to be applied to the facts of this case. If at trial Plaintiff can establish that the prepetition debt attributed to Defendant through the alter ego doctrine is excepted from discharge, the Plaintiff will have a claim for the attorney fees incurred prepetition associated with that debt. For this reason, Defendant's motion is denied as to prepetition attorney fees.

With respect to attorney fees incurred in this adversary proceeding, the result is different. When attorney fees are provided for by contract or by state statute, a party may be entitled to such fees in a bankruptcy proceeding. *In re Fobian*, 951 F.2d 1149, 1153 (9th Cir. 1991). "However, where the litigated issues . . . [are] peculiar to federal bankruptcy law, attorney's fees will not be awarded absent bad faith or harassment by the losing party." *Id.* This discharge action is based on federal bankruptcy law. *See* 11 U.S.C. § 523(a) (6). Since there is no

provision providing for attorney fees in actions brought under 523(a) (6), Plaintiff has no legal basis to recover attorney fees in this particular proceeding. Therefore, Defendant's motion to dismiss should be granted with respect to Plaintiff's claim for attorney fees in this adversary proceeding.

Lastly, Plaintiff asserts a right to a trial by jury on his various claims. The determination is made by reference to the two-part test of *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989): "First, we compare the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity. Second, we examine the remedy sought and determine whether it is legal or equitable in nature." *Id.* at 42 (quoting *Tull v. United States*, 481 U.S. 412, 417-418 (1987). "Actions to determine the nondischargeability of debts fail the second prong of this test because such proceedings are equitable in nature." *American Express Travel Related Services Company Inc. v. Hashemi (In re Hashemi)*, 104 F.3d 1122, 1124 (9th Cir. 1997). Therefore, litigants in bankruptcy have no right to a jury trial under the Seventh Amendment in dischargeability proceedings. Accordingly, Defendant's motion should be granted as to this claim, and this action will proceed to trial before the court sitting without a jury.

Conclusion

For the reasons set forth above, a separate order will be entered which grants Defendant's Motion to Dismiss as to Plaintiff's claims for relief under Sections 523(a) (2) and (a) (4) of the Bankruptcy Code, as to Plaintiff's claim

for attorney fees incurred in this proceeding, as to Plaintiff's claim to the right to a jury trial. Defendant's Motion will be denied as to Plaintiff's claim for relief under Section 523(a) (6), as to Plaintiff's claim for an award, and to except that award from discharge, of punitive damages, and as to Plaintiff's claim for prepetition attorney fees.

DATED This 25th day of August, 1997.

/s/ Jim D. Pappas
JIM D. PAPPAS
CHIEF U. S. BANKRUPTCY JUDGE
DISTRICT OF IDAHO
VISITING JUDGE